

§ 240.14a-6

17 CFR Ch. II (4-1-12 Edition)

(e) All proxy statements shall disclose, under an appropriate caption, the following dates:

(1) The deadline for submitting shareholder proposals for inclusion in the registrant's proxy statement and form of proxy for the registrant's next annual meeting, calculated in the manner provided in § 240.14a-8(e)(Question 5);

(2) The date after which notice of a shareholder proposal submitted outside the processes of § 240.14a-8 is considered untimely, either calculated in the manner provided by § 240.14a-4(c)(1) or as established by the registrant's advance notice provision, if any, authorized by applicable state law; and

(3) The deadline for submitting nominees for inclusion in the registrant's proxy statement and form of proxy pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials for the registrant's next annual meeting of shareholders.

(f) If the date of the next annual meeting is subsequently advanced or delayed by more than 30 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform shareholders of such change, and the new dates referred to in paragraphs (e)(1) and (e)(2) of this section, by including a notice, under Item 5, in its earliest possible quarterly report on Form 10-Q (§ 249.308a of this chapter), or, in the case of investment companies, in a shareholder report under § 270.30d-1 of this chapter under the Investment Company Act of 1940, or, if impracticable, any means reasonably calculated to inform shareholders.

[17 FR 11432, Dec. 18, 1952, as amended at 36 FR 8935, May 15, 1971; 37 FR 23179, Oct. 31, 1972; 44 FR 68770, Nov. 29, 1979; 51 FR 42061, Nov. 20, 1986; 61 FR 24656, May 15, 1996; 63 FR 29118, May 28, 1998; 63 FR 46881, Sept. 3, 1998; 73 FR 977, Jan. 4, 2008; 75 FR 56782, Sept. 16, 2010]

§ 240.14a-6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive

copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting, or for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a business development company, if the solicitation relates to any meeting of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal included pursuant to Rule 14a-8 (§ 240.14a-8 of this chapter);

(4) A shareholder nominee for director included pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials.

(5) The approval or ratification of a plan as defined in paragraph (a)(6)(ii) of Item 402 of Regulation S-K (§ 229.402(a)(6)(ii) of this chapter) or amendments to such a plan;

(6) With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this section;

(7) With respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued; and/or

(8) A vote to approve the compensation of executives as required pursuant to section 14A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(1)) and § 240.14a-21(a) of this chapter, or pursuant to section 111(e)(1) of

the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5221(e)(1)) and § 240.14a-20 of this chapter, a vote to determine the frequency of shareholder votes to approve the compensation of executives as required pursuant to Section 14A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78n-1(a)(2)) and § 240.14a-21(b) of this chapter, or any other shareholder advisory vote on executive compensation.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

NOTE 1 TO PARAGRAPH (a): The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

NOTE 2 TO PARAGRAPH (a): The official responsible for the preparation of the proxy material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

NOTE 3 TO PARAGRAPH (a): Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a "solicitation in opposition" includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to Rule 14a-8 (§ 240.14a-8 of this chapter). The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a-8 does not constitute a "solicitation in opposition," even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal. The inclusion of a shareholder nominee in the registrant's proxy materials pursuant to § 240.14a-11, an applicable state or foreign law provision, or a registrant's governing documents as they relate to the inclusion of shareholder director nominees in the registrant's proxy materials does not constitute a "solicitation in opposition" for purposes of Rule 14a-6(a) (§ 240.14a-6(a)), even if the registrant opposes the shareholder nominee and solicits against the shareholder nominee and in favor of a registrant nominee.

NOTE 4 TO PARAGRAPH (a): A registrant that is filing proxy material in preliminary form only because the registrant has commented on or referred to a solicitation in opposition

should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) *Definitive proxy statement and other soliciting material.* Eight definitive copies of the proxy statement, form of proxy and all other soliciting materials, in the same form as the materials sent to security holders, must be filed with the Commission no later than the date they are first sent or given to security holders. Three copies of these materials also must be filed with, or mailed for filing to, each national securities exchange on which the registrant has a class of securities listed and registered.

(c) *Personal solicitation materials.* If part or all of the solicitation involves personal solicitation, then eight copies of all written instructions or other materials that discuss, review or comment on the merits of any matter to be acted on, that are furnished to persons making the actual solicitation for their use directly or indirectly in connection with the solicitation, must be filed with the Commission no later than the date the materials are first sent or given to these persons.

(d) *Release dates.* All preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) *Public availability of information.* All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked "Preliminary

Copies,” and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential treatment.* If action will be taken on any matter specified in Item 14 of Schedule 14A (§ 240.14a-101), all copies of the preliminary proxy statement and form of proxy filed under paragraph (a) of this section will be for the information of the Commission only and will not be deemed available for public inspection until filed with the Commission in definitive form so long as:

(i) The proxy statement does not relate to a matter or proposal subject to § 240.13e-3 or a roll-up transaction as defined in Item 901(c) of Regulation S-K (§ 229.901(c) of this chapter);

(ii) Neither the parties to the transaction nor any persons authorized to act on their behalf have made any public communications relating to the transaction except for statements where the content is limited to the information specified in § 230.135 of this chapter; and

(iii) The materials are filed in paper and marked “Confidential, For Use of the Commission Only.” In all cases, the materials may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make any inquiries or investigation into the materials as may be necessary to conduct an adequate review by the Commission.

Instruction to paragraph (e)(2): If communications are made publicly that go beyond the information specified in § 230.135 of this chapter, the preliminary proxy materials must be re-filed promptly with the Commission as public materials.

(f) *Communications not required to be filed.* Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(g) *Solicitations subject to § 240.14a-2(b)(1).* (1) Any person who:

(i) Engages in a solicitation pursuant to § 240.14a-2(b)(1), and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over \$5 million,

shall furnish or mail to the Commission, not later than three days after the date the written solicitation is first sent or given to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Solicitation (§ 240.14a-103) which statement shall attach as an exhibit all written soliciting materials. Five copies of an amendment to such statement shall be furnished or mailed to the Commission, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the Commission, be furnished or mailed to each national securities exchange upon which any class of securities of the registrant is listed and registered.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

(h) *Revised material.* Where any proxy statement, form of proxy or other material filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section (or in the case of investment companies registered under the Investment Company Act of 1940, three of such copies) shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 (§ 240.0-11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to § 240.14a-6(g), no fee shall be required.

(j) *Merger proxy materials.* (1) Any proxy statement, form of proxy or other soliciting material required to be filed by this section that also is either

(i) Included in a registration statement filed under the Securities Act of 1933 on Forms S-4 (§ 239.25 of this chapter), F-4 (§ 239.34 of this chapter) or N-14 (§ 239.23 of this chapter); or

(ii) Filed under § 230.424, § 230.425 or § 230.497 of this chapter is required to be filed only under the Securities Act, and is deemed filed under this section.

(2) Under paragraph (j)(1) of this section, the fee required by paragraph (i) of this section need not be paid.

(k) *Computing time periods.* In computing time periods beginning with the filing date specified in Regulation 14A (§§ 240.14a-1 to 240.14b-1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

(l) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S-K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S-4 (17 CFR 229.25) or Form F-4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S-K (17 CFR 229.901) must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for

giving notice under applicable state law.

(m) *Cover page.* Proxy materials filed with the Commission shall include a cover page in the form set forth in Schedule 14A (§ 240.14a-101 of this chapter). The cover page required by this paragraph need not be distributed to security holders.

(n) *Solicitations subject to § 240.14a-2(b)(4).* Any person who:

(1) Engages in a solicitation pursuant to § 240.14a-2(b)(4); and

(2) At the commencement of that solicitation both owns five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction, and engages in the business of buying and selling limited partnership interests in the secondary market, shall furnish or mail to the Commission, not later than three days after the date an oral or written solicitation by that person is first made, sent or provided to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Preliminary Roll-up Communication (§ 240.14a-104). Five copies of any amendment to such statement shall be furnished or mailed to the Commission not later than three days after a communication containing revised material is first made, sent or provided to any security holder.

(o) *Solicitations before furnishing a definitive proxy statement.* Solicitations that are published, sent or given to security holders before they have been furnished a definitive proxy statement must be made in accordance with § 240.14a-12 unless there is an exemption available under § 240.14a-2.

(p) *Solicitations subject to § 240.14a-11.* Any soliciting material that is published, sent or given to shareholders in connection with § 240.14a-2(b)(7) or (b)(8) must be filed with the Commission as specified in that section.

[17 FR 11432, Dec. 18, 1952]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.14a-6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.